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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Fay Sharpe LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115				
EXAMINER				
ANDERSON, JAMES D				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/648,993

Applicant(s)

SCHNEIDER, DAVID J.

Examiner

JAMES D. ANDERSON

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-48 and 50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 43-48 and 50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Formal Matters

Applicants' response and amendments to the claims, filed 12/19/2008, are acknowledged and entered. Claims 49 and 51 have been cancelled by Applicant. Claims 43-48 and 50 are pending and under examination.

The indicated allowability of claims 43-48 and 50 is withdrawn in view of the newly discovered reference(s) to the known disinfectant properties of trichloromelamine. Rejections based on the newly cited reference(s) follow.

Upon further consideration, USP No. 6,749,804 (Published Jun. 15, 2004; Filed Oct. 9, 2001; Priority claimed to Oct. 30, 2000) is being applied as prior art against the pending claims. The inventive entity of the '804 patent is different than the inventive entity of the present application. As the present application is only entitled to the benefit of U.S. Application No. 09/909,707, filed July 20, 2001, the '804 patent qualifies as prior art under 35 U.S.C. 102(e).

Response to Arguments

Any previous rejections and/or objections to claims 49 and 51 are **withdrawn** as being moot in light of Applicant's cancellation of the claims.

Claim Rejections - 35 USC § 102 – Ground of Rejection

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 43-48 and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by **Schneider et al.** (USP No. 6,749,804 B2; Issued Jun. 15, 2004; Filed Oct. 9, 2001; Priority claimed to Oct. 30, 2000).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Schneider et al. teach methods for treating and sanitizing animal habitats comprising treatment of an animal habitat with trichlormelamine (Abstract). In accordance with the invention, Schneider et al. teach sanitizing animal habitats by dusting of powdered trichlormelamine or by treating bedding/litter with trichlormelamine, or by soaking the animal habitat with a solution of trichlormelamine (col. 3, lines 31-39). The inventors teach that application of trichlormelamine in accordance with the invention has indirect insecticide properties in that by lowering the pH, the life cycle of certain insects is interrupted and hence the insect is controlled, i.e., by application of trichlormelamine to a habitat the pH is lowered to less than 5, a point at which the formation and growth of the Darkling beetle will not occur (col. 5, lines 24-32).

With regard to claims 44-48 and 50, Schnieder et al. teach the same application methods and amounts of trichlormelamine (see claims 2-8, 10, 13-16, 27-32, 34, and 37-39 of the '804 patent). It is noted that U.S. Provisional Application No. 60/243,798, filed 10/30/2000 by inventor Bell provides written/enabling support for the use of trichloromelamine alone and in combination with citric acid for treating animal drinking water and animal waste wherein trichloromelamine is applied in a concentration of 100 ppm. Inventor Bell also discloses the use of trichloromelamine compositions in treating cat litter, poultry bedding, livestock bedding and surface treatment.

Claim Rejections - 35 USC § 103 – New Grounds of Rejection

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Arsem** (USP No. 2,472,361; Issued June 7, 1949) and **Marks *et al.*** (USP No. 2,817,621; Issued Dec. 24, 1957) in view of **Katzen** (USP No. 4,369,199; Issued Jan. 18, 1983).

The instant claims are drawn to treating an animal habitat with trichloromelamine such that the pH is lowered to less than 5. Applicants disclose that such treatment has “indirect insecticide properties” and thus can be used to control Darkling beetles.

Arsem discloses the claimed trichloromelamine (Table at col. 7) and teaches that highly halogenated substances such as trichloromelamine are useful as disinfectants and bleaching agents (col. 7, lines 25-35). The invention of Arsem is directed to methods of making trichloromelamine and thus does not disclose treating animal habitats with the compounds of the invention.

Marks discloses compositions for germicidal or disinfecting purposes comprising N-chloro compounds and iodide (col. 1, lines 16-21; col. 2, lines 34-49). Trichloromelamine is a particularly preferred N-chloro compound for use as a germicidal or disinfectant (col. 5, lines 26-27). Marks discloses that the germicidal and disinfectant compositions are preferably employed at a pH below 5 by using buffering agents such as citrate in of an acid salt (col. 5, line 74 to col. 6, line 25). Also see Example I wherein a composition comprising trichloromelamine, arylalkyl sulfonate, citric acid, monosodium dihydrogen phosphate, and potassium iodide is disclosed. Marks discloses a range of concentration of disinfectant in aqueous solution so as to provide from 50 to 200 ppm of available chlorine (col. 9, line 70 to col. 10, line 5).

Thus, both Arsem and Marks disclose trichloromelamine as a suitable disinfectant and Marks further discloses the use of compositions comprising trichloromelamine as germicides. Neither Arsem nor Marks discloses treating animal habitats with trichloromelamine.

However, Katzen discloses treating animal or poultry waste contained in a dropping pit or sedimentation tank of an animal or poultry confinement or holding pen with a sufficient amount of an acid to achieve and maintain the animal or poultry waste at a pH of about 4 (Abstract). Also, Katzen discloses treating animal or poultry bedding with an acid to maintain a pH of about 4 (id.). The treatment eliminates the problems of giving off of unhealthy gases and the growth of pathogens in the environment (Abstract; col. 2, lines 28-33; col. 4, lines 39-45).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use a composition comprising trichloromelamine and citric acid as disclosed in Marks to treat animal waste and/or bedding so as to maintain the waste and/or bedding at a pH of about 4 as taught in Katzen. The skilled artisan would expect that such treatment would not only eliminate unhealthy gases and the growth of pathogens as taught in Katzen, but would also have disinfectant and germicidal properties as taught in Arsem and Marks. It is well established in the art that animal housings and bedding are in need of disinfecting and thus treatment of such housings and bedding with a disinfectant solution would have been obvious to one skilled in the art at the time the invention was made. Because compositions comprising trichloromelamine were known to have both disinfectant and germicidal properties when used at or below a pH of 5, the skilled artisan would have been motivated to use such compositions for treating an animal habitat, including waste and bedding as disclosed in Katzen.

Marks discloses the use of compositions comprising trichloromelamine as disinfectants and germicides, wherein the compositions are maintained at a pH below 5. As such, use of such compositions in the methods of reducing the pH of animal waste and/or bedding to below about 4 as taught in Katzen would have been *prima facie* obvious to one skilled in the art at the time the invention was made.

With regard to claim 47, which recites treatment by dusting the habitat with powdered trichloromelamine, the skilled artisan would expect that dusting a habitat with trichloromelamine would maintain the disinfectant and germicidal properties of trichloromelamine as taught in Arsem and Marks. As such, this method of application of trichloromelamine is not seen as a patentable distinction over the cited prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES D. ANDERSON whose telephone number is (571)272-9038. The examiner can normally be reached on MON-FRI 9:00 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James D Anderson/
Examiner, Art Unit 1614

/Ardin Marschel/
Supervisory Patent Examiner, Art Unit 1614

/Andrew Wang/
Acting Director of Technology Center 1600